

## **BILL ANALYSIS**

Senate Research Center  
88R29412 KKR-D

C.S.S.B. 2143  
By: Parker  
Health & Human Services  
5/17/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Families with a medically fragile child seek critical medical supports and services by adding their child's name to an interest list for a specialized Home and Community-Based Services (HCBS) Medicaid Waiver Program known as the Medically Dependent Children's Program (MDCP). The program currently serves around 6,000 children. The waitlist can take upwards of five years, and there were more than 5,842 children on the list for services as of February 2023. MDCP provides support services to children who are medically dependent based upon medical need, to encourage de-institutionalization of children and young adults who reside in nursing facilities or require a nursing facility level of care to remain in the community. Texas is the only state with a significant wait list for home and community-based services for medically fragile children.

S.B. 2143 would decrease the waiting list by (1) increasing available waiver slots for children at high risk of being placed in an institutional setting; (2) eliminating the overnight nursing home stay requirement for program eligibility through the federal Money Follows the Person demonstration project; and (3) allowing medically fragile children who are accessing the STAR Kids Program through disability eligibility for SSI to be assessed for and transition to MDCP if they meet the medical necessity criteria for nursing facility level of care. There are currently approximately 2,000 children on the MDCP waitlist who are eligible for SSI due to disability. However, SSI requires monthly family income checks with very stringent limits, which results in frequent loss of coverage, gaps, disruption to services, and delays in care, with the child intermittently losing access to critical services if a family member happens to have overtime hours or have seasonal employment, and prevents family members from bettering or improving their family situation. This will provide more stability to these families and their children, reducing hospitalizations and ER visits due to disruption in services.

Additionally, S.B. 2143 will further reduce the HCBS interest lists by aligning the financial eligibility for the Texas Home Living HCBS waiver (TxHmL) so that it matches other Texas HCBS waivers, allowing children with disabilities who meet the eligibility requirements to access the lower cost tiered waiver in lieu of more costly comprehensive waiver services, and removes the IQ requirement. TxHmL is currently the only Texas HCBS waiver which does not utilize the special income provision for home and community based services waivers.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 2143 amends current law relating to the eligibility for and access to certain Medicaid waiver programs, including the medically dependent children (MDCP) and the Texas home living (TxHmL) waiver programs.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 531, Government Code, by adding Sections 531.06012 and 531.06041 and amending Section 531.0604, as follows:

Sec. 531.06012. MEDICALLY DEPENDENT CHILDREN (MDCP) WAIVER PROGRAM: ALLOCATION OF DIVERSION SLOTS. Requires the Health and Human Services Commission (HHSC), to the extent possible, to allocate a portion of medically dependent children (MDCP) waiver program slots as diversion slots for children who:

- (1) meet the program's level of care criteria for medical necessity for nursing facility care; and
- (2) are at high risk of being placed in an institutional setting.

Sec. 531.0604. MEDICALLY DEPENDENT CHILDREN PROGRAM ELIGIBILITY REQUIREMENTS; NURSING FACILITY LEVEL OF CARE. Prohibits HHSC, to the extent allowed by federal law, from requiring that a child reside in a nursing facility for:

- (1) creates this subdivision from existing text; or
- (2) any period of time to meet the nursing facility level of care required for the child to be determined eligible for the medically dependent children (MDCP) waiver program if the child is:
  - (A) medically fragile; and
  - (B) accessing the program through a "Money Follows the Person" demonstration project.

Sec. 531.06041. ASSESSMENT OF CERTAIN CHILDREN FOR MEDICALLY DEPENDENT CHILDREN (MDCP) WAIVER PROGRAM. Requires HHSC, to the extent possible, to enroll a child in the medically dependent children (MDCP) waiver program if the child:

- (1) is on the interest list for the program;
- (2) receives Supplemental Security Income (SSI) (42 U.S.C. Section 1381 et seq.); and
- (3) meets the program's level of care criteria for medical necessity for nursing facility care.

SECTION 2. Amends Subchapter B, Chapter 32, Human Resources Code, by adding Section 32.0521, as follows:

Sec. 32.0521. ELIGIBILITY FOR TEXAS HOME LIVING (TxHmL) WAIVER PROGRAM. (a) Defines "Section 1915(c) waiver program."

(b) Provides that an individual, to the extent permitted by federal law, is financially eligible to participate in the Texas home living (TxHmL) waiver program if the individual's family income is not more than the special income limit established by HHSC for other Section 1915(c) waiver programs, including the home and community-based services (HCS) waiver program.

(c) Prohibits HHSC from requiring that an individual who has an approved primary diagnosis of a related condition meet intelligence quotient criteria to be eligible for the Texas home living (TxHmL) waiver program.

SECTION 3. Provides that, in a state fiscal year, HHSC is not required to implement a provision in another section of this Act imposing a duty on HHSC to take an action, including a provision that HHSC determines would require adding additional slots under the medically dependent children (MDCP) waiver program or the Texas home living (TxHmL) waiver program, unless money is specifically appropriated to HHSC for that fiscal year to carry out that duty,

notwithstanding any other section of this Act. Authorizes HHSC to implement the provision in that fiscal year to the extent other funding is available to HHSC for the implementation.

SECTION 4. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 5. Effective date: September 1, 2023.